



purports to represent actual cars, actual races, actual drivers, and actual tracks. The fact that it does represent actual cars, races, drivers, and tracks and is able to simulate actual racing conditions is part of what makes the game so popular. I purchased a copy of the NASCAR2003 game in early 2003, shortly after the game was released. I used the game to compete in online races with a large number of other sim racing enthusiasts.

3. Not long after the NASCAR2003 game was released, the word spread among the sim racing community that the owner of the NASCAR2003 game, Sierra, was not going to continue to develop the game further. Some time prior to July 2003, some sim racing enthusiasts got together and started a group known as "Project Wildfire." The group included people who worked, or had worked, at Papyrus Design Group, which was the subsidiary of Sierra that created the game.

4. Papyrus contacted the people comprising Project Wildfire and informed them that Papyrus was going to be unlocking the physics models for the Busch and Craftsman Truck models. Papyrus provided Project Wildfire patches during beta testing and received some preliminary help from persons who worked at Papyrus during their own time. Project Wildfire was well into creating the GNS and CTS mods when they were surprised to learn of the TA type physics. Papyrus made the physics models available via a patch.

5. In August 2003 Project Wildfire started a web site on which it confirmed that Papyrus was abandoning the NASCAR Racing Platform. Later, as appears on Exhibit 2, Project Wildfire posted the following on its web site as its Mission Statement:

**Project Wildfire (PWF) Mission Statement**

Papyrus racing simulations have provided the ultimate sim racing experience both off and online over the past 10 years. Papyrus will no longer be producing racing simulations using the NASCAR Racing platform. However, they provided the sim

racing community the ability to modify the simulation having added 3 new physics engines, a track making tool, and initialization files that can be modified in countless ways. Project Wildfire is dedicated to exploiting those capabilities in an effort to provide a very close and passionate sim racing community further and continued enjoyment of the NASCAR Racing Series platform. PWF has a compliment of talented personnel in almost all areas required to further enhance both the on and offline racing experience. We're extremely motivated and dedicated to this effort and see no limits or end in sight in regard to the future of simulation racing using the Papyrus NASCAR Racing platform. While PWF and simulation racing will evolve, the best may well be yet to come.

Exhibit 2 are some of the pages that the Wayback Machine captured of the Project Wildfire web site as it appeared in late June 2004, about a year after Project Wildfire was formed. In addition to the "home" pages, there are pages of "downloads" of tools, mods, tracks, and other add-ons to the NASCAR2003 game.

6. An interview of a member of Project Wildfire that was posted in July 2003 is attached as Exhibit 3, in which he disclosed that John Henry acts as the "Sr. Advisor" to Project Wildfire. The Project Wildfire group had no official connection with the Papyrus Design Group. However, the Project Wildfire group included people with ties to people in the Papyrus Design Group, and Project Wildfire represented on their web site that they were acting with Papyrus's knowledge and consent.

7. In August of 2003, Project Wildfire released a tool named "Sandbox" to the sim racing community. Exhibit 4. This tool was developed by Papyrus and given to Project Wildfire to share with the sim racing community. The Sandbox tool allowed interested people to modify existing tracks and/or to create new tracks for the NASCAR2003 game.

8. Anybody was free to download the Sandbox tool. In making the tool available to

Project Wildfire to share with the sim racing community, Papyrus/Sierra did not include any restrictions on who could use it or how it could be used. Modifying tracks, and creating new tracks, is a violation of the terms of the NASCAR2003 EULA. By Papyrus/Sierra sharing with owners of the NASCAR2003 game the Sandbox tool, Papyrus/Sierra were inviting people to violate the NASCAR2003 EULA.

9. By the time that the Project Wildfire web site became active, and Papyrus released the Sandbox tool and a patch, I was under the impression, as was everyone else that I knew in the sim racing community, that Sierra and Papyrus were no longer going to develop or market the NASCAR2003 game, or any successor game to it, and that those of us in the sim racing community were free to do what we wished in order to continue to be able to use, and to enhance, the game. The enthusiasm of the members of the sim racing community was all that was keeping up interest in the NASCAR2003 game, no one else.

10. In September of 2003, Project Wildfire released the CTS Mod that used modified physics. **Exhibit 2**. There was no EULA limiting a user's right to analyze or further modify this file, or any of the files that Project Wildfire released. In an October 2003 email, attached as **Exhibit 4**, Steve Meyers confirmed that Papyrus had passed along tools to enable people even to obtain the source code. During the remainder of 2003, Project Wildfire continued to release new tracks and make other enhancements available to the sim community, without any restrictions on what a user could do with these files. Project Wildfire encouraged users to make further enhancements to files.

11. In February 2004 Project Wildfire released yet another new mod, with yet new physics. It was known as the PTA Mod. These new mods, including the GNS Mod, used modified physics, different from the physics that accompanied the NASCAR2003 game as

sold. The new mod files were released without any restrictions on what one might do with them. Again it was my understanding, and that of those I was in contact with in the sim racing community, that Papyrus and Sierra were fully aware of Project Wildfire's work, and sanctioned letting people modify the physics in the original NASCAR2003 game to create new mods.

12. In the early part of 2004, Sierra stopped selling the NASCAR2003 game, and my understanding and that of others I knew in the sim racing community was that Sierra had no plans to market any further versions of NASCAR2003 because their license to use the NASCAR name had expired. My understanding was confirmed by articles posted on the web, including one posted at About.com in early May 2004, attached as **Exhibit 5**. This information, along with the representations in Project Wildfire's Mission Statement and its passing along tools from Papyrus and releasing new mods using new physics with Papyrus's knowledge and apparent assent, just reinforced my understanding and belief-- that other sim racing enthusiasts with whom I had contact shared-- that there were no restrictions on creating new mods or other add-ons to the NASCAR2003 game.

13. The first time that I did any work of this nature was in late June or early July, after the public announcement that Papyrus had shut its doors, and Sierra was no longer selling, and no longer able to market, the NASCAR2003. This was a year after Project Wildfire first announced that Papyrus was no longer developing the game.

14. Project Wildfire was not the only group that had been working on creating and sharing with the sim racing community enhancements to the NASCAR2003 game during 2003 and into 2004. In late June or early July 2004, I became part of an effort that created and released to the general public an Open Wheel Racing (OWR) beta mod that is still

available today. The car models were highly modified to represent an Indy style car, and they used the same modified physics from the existing PTA mod that Project Wildfire had created and released to the general public in February 2004. Additionally, the track initialization files were also heavily modified. In the summer of 2004 I had started a web site, [www.ow-racing.com](http://www.ow-racing.com) dedicated to "open wheel" racing. The OWR mod was made available to the general public on this web site on September 20, 2004, together with instructions for its installation and use. **Exhibit 6** is a copy of the instructions for the OWR mod. **Exhibit 7** shows how the home page of the [www.ow-racing.com](http://www.ow-racing.com) looked in November 2004, and shows the various downloads that were available through the site as of then. The available downloads included links to downloads available on Project Wildfire's web site.

15. Project Wildfire's release of new mods with new physics is what made it easier to create a new mod. By comparing the files for two different mods, one can see where all of the differences are between the two mods. These are the places in the program where values would have to be changed if someone wanted to create a different mod.

16. About the same time that I first began working with a group to develop a mod, in late June or early July 2004 Project Wildfire unexpectedly removed all of the content and available downloadable files from its web site and posted only the following Press Release announcement in its place, shown on **Exhibit 8**:

Project Wildfire, the internet based creator of many popular NR2003 modifications, is pleased to announce that we have been signed on to help in the creation of a retail racing product. We will begin to work on an exciting new racing experience immediately. We are very proud of what we have achieved and are equally thrilled that a development studio has recognized our talents. We look forward to discussing our future plans with you, and when the time is right we will provide you with

additional details..

Our site will remain active and our forums will remain up. However, we will be removing all downloadable content from our site

Thanks for making this a very enjoyable experience for us all. The tradition will continue...

-The Project Wildfire Staff.

17. Sometime in the early summer of 2004, I became part of a group that created what became the OWSC (Sprint Car) Mod. I provided the web space and test servers that would serve as beta platforms. The OWSC mod used modified physics, and created a different executable file. The physics, car models, track initialization files were all modified heavily to simulate a winged sprint car. For example, the OWSC mod only had a single gear in the car, compared to the normal 4 gears for a NASCAR Cup car.

18. The OWSC mod was beta tested and released to the general public around the middle of September 2004. The mod was available on my [www.ow-racing.com](http://www.ow-racing.com) web site on September 20, 2004 [Exhibit 7], and there was a link to it on my [www.torn80alley.com](http://www.torn80alley.com) web site. In order to run the OWSC mod, a user always was required to have a legitimate copy of the NR2003 game.

19. Later in September 2004, in response to requests from some sim enthusiasts who were using the OWSC mod, I created and posted a NO-CD file that would enable them to run the OWSC mod file without having the NASCAR2003 disk physically in their cd-rom slot of their pc. They still needed to have a valid copy of NASCAR2003 installed on their pc. The

NO-CD patch that I created worked only with the OWSC mod file. It would not work on the original NASCAR2003 game.

20. I created the NO-CD file for the OWSC mod, that I named OWSC\_NOCD by modifying one of the NO-CD files that were available for the original NASCR2003 game. There were -- and still are -- NO-CD files available for the original NASCAR2003 game. Because the NASCAR2003 game has not been available from at least April 2004, the NO-CD files are especially important, because it is easy to damage or lose the original cd.

21. At the same time, work was ongoing to update the OWR mod to be a more realistic representation of the actual Indy style cars being used. This version of the OWR would use highly modified physics altering a huge number of parameters in the executable file to more closely represent an Indy style car. Work proceeded on this mod through the end of 2004 and into 2005.

22. Sometime around September 2004, a new group, First-Racing, now known as iRacing.com, started a web site. This group was founded by John Henry and Dave Kaemmer. Around October 2004, First-Racing posted a notice on their web site that they were taking requests from people who wished to serve as beta testers for a new product. I applied to be a beta tester in October 2004, but I was not accepted at that time.

23. In December 2004 First-Racing posted another public notice on its website,

**Exhibit 9:**

First-Racing invites you to join our FIRST-Racing beta league. This beta, in process since October, is an early testing of ideas and concepts for future products. This league will begin January 2nd and will take place Sunday, Monday, Wednesday and Thursday nights.



You are required to own a copy of NASCAR 2003 Season. We will provide the mods we will use if your application is accepted.

We will be running oval and road course series on all nights. You will be asked to average at least two races per week. You choose the night(s) you want to race. Times are generally 9pm and midnight Eastern U.S. Time. There will be a race time each night for European drivers to be announced.

You will be required to sign a non-disclosure agreement and also to verify all information.

If you are interested in joining us please fill out an application located at <http://www.First-Racing/index.php?/First-Racing/application/>. All information is required and will be verified.

First-Racing will call you for verification if your application is accepted and we choose to invite you into this beta.

Thank you,

FIRST-Racing.net

Posted on 12/08 at 02:15 PM

24. After this notice appeared in December 2004 I was notified that I had been accepted to be part of First-Racings beta testing. I became part of the beta test team for that particular period in January 2005 mentioned in the web posting. As required by the notice, I already had purchased and owned a copy of NASCAR2003. As required by the notice I signed a Non-Disclosure Agreement. I was later accused of violating that Nondisclosure Agreement, but I steadfastly deny that I did so. I did not post anything on July 5, 2005.

25. It was public knowledge, on First-Racing's own web site, that they were running what they called "beta tests." First-Racing never told me how many beta testers they had, and I never knew. I could not disclose the existence of a new "product" because the files that First-Racing made available did not contain or identify any new product. The files were only a modified NASCAR2003 game, which First-Racing repeatedly stated would not be part of their product. First-Racing later posted a notice, **Exhibit 10**, that confirms that they did not have a product to officially beta test until more than three years later, in May 2008, that finally was released to the public in August of 2008, nearly 4 years after so-called January 2005 "beta" test.

26. What First-Racing was doing was what the public notice on their web site, **Exhibit 9**, said: "testing ideas and concepts for future products" using a modified version of the NASCAR2003 game. First Racing never disclosed to me what any of the "ideas" or "concepts" were that they were testing. I did not know what their ideas or concepts were, and there was nothing about the way the game was played that gave any clue as to what First-Racing's ideas or concepts might be, or what information they were evaluating while we played the game.

27. The Application Form to become a beta tester, **Exhibit 11**, requested that I disclose information about my sim racing experience. I provided all the requested information, including disclosing information on my torn8oalley.com and ow-racing.com web sites. If First-Racing did verify the information in my Application as they said they would do, then they knew before accepting me into their beta testing program, that the initial OWR mod had been released, and that the OWSC mod also had been released to the general

public. This is the same OWSC mod that had modified physics.

28. I received beta files from First-Racing over the internet in the form of a zip file. There was no EULA accompanying these files. The only instructions accompanying them were:

Instruction: Unzip the above files to your NASCAR2003 folder. They will unzip to proper folders if you do so. Make a shortcut to the new exe and use this for all beta testing. Your old exe will not be affected and you may continue to use that for normal racing outside the beta.

If the Papyrus/Sierra EULA that I had to click when I opened the NASCAR2003 game in February 2003 were still effective in 2005, then First-Racing's instruction was asking me to commit a direct violation of that EULA.

29. I was part of the First-Racing "beta" test for only a short period of time -- from the beginning of January 2005, to the beginning of February 2005, when real life got in the way, and I was served with divorce papers. My brief involvement as a "beta" tester had no affect whatsoever on the development of the OWR and OWSC mods that had been developed and posted on my web site prior to my participating as a beta tester. I never used First-Racing's beta file in any of the work that I did on the mods I helped to create.

30. During the first half of 2005, I had a series of communications and email exchanges with Steve Meyers and Bret Roubinek, some of which are memorialized in **Exhibit 12A-M**. About the same time that I was selected as a beta tester, I attempted to contact Steve Meyers at First-Racing, to advise First-Racing of plans being made to release of the final OWR Mod using the modified physics as described earlier on the www.OW-Racing.net web site. Mr. Myers did not respond to my attempts to contact him, even after I

was accepted by First-Racing as a beta tester. **Exhibit 12B.**

31. During this same time frame, a mod group named Team Redline released a highly modified version of NASCAR2003 known as the GTP Mod. Virtually everything in the game was changed, including the UI, car models, tracks, etc. The mod used highly modified physics, and still exists today and still is available for download.

32. Sometime in early March 2005, while on a business trip in Maryland, I finally received an email from Steve Myers asking me to remove files that First-Racing considered to be an infringement on their copyrighted material, **Exhibit 12A**. He made no mention of my previous attempts to contact him. He just simply asked that I remove files they considered illegal, or they would seek further legal action. I made a quick search of the U.S. copyright database, and that database did not show that First-Racing owned the rights to NASCAR2003. Based on my search I believed that Sierra still owned NASCAR2003.

33. After talking to Mr Myers on the phone, he assured me that First-Racing was the legal owner. I told him that I needed a few days to finish my business trip, and that I would get back with him the following week. After returning from my business trip, and after more phone calls with Mr Myers and Brett Roubinek, who I believe was in marketing, I agreed to remove the files in question from the [www.ow-racing.com](http://www.ow-racing.com) web site temporarily as a showing of good faith, while all of the copyright business was sorted out. **Exhibit 12D&E.**

34. On March 3, 2005 Dave Kaemmer had posted an "Open Letter" on the First-Racing web site, **Exhibit 13**, and several other web sites visited by sim racing enthusiasts, claiming that he and John Henry owned the rights to the NASCAR2003 game. He publicly accused those of us who had in good faith worked on creating mods and other add-ons to the NASCAR2003 game as "hackers" and implied that we were thieves, for attempting to add

enhancements to the NASCAR2003 game. In the same letter, he did authorize people to make some software modifications, which in themselves are violations of the EULA. In the same time period First-Racing filed a lawsuit against Tim McArthur over his publishing of a mod using modified physics to the NASCAR2003 game. It is my understanding that an out of court settlement was reached between the parties, with First-Racing paying a sum of money to purchase Mr McArthur's files.

35. In response to First-Racing's tactics, I created the website [www.first-racing-sucks.com](http://www.first-racing-sucks.com) as a place where people would be allowed to vent their frustrations about First-Racing and the way the sim racing community was being mistreated. The link that I posted on the first-racing-sucks.com web site, that had the appearance of being one of the files First-Racing objected to, was nothing more than a sound file from the Project Wildfire Trans Am mod, to which I assigned a different name.

36. In the meantime, per my agreement, the files that Mr. Myers requested that I remove still were not available on any of my web sites during March, April, May, June or July 2005. The files were still on the file server, and the name of the file was still visible on the web site if one went to download it, but no one could download it because I removed the links to them and substituted the notice "TEMPORARILY REMOVED."

37. During April through June I was in periodic contact with Bret Roubinek. **Exhibit 12F-M.** He was looking to find artists to work on First-Racing's new product, and was asking whether I or people I knew would be interested. Our communications were personal in nature, and always cordial.

38. When I created the first-racing-sucks.com web site in March 2005, although David Kaemmer said that he and John Henry owned the NASCAR2003 game, that was not

what the U.S. Copyright Office records showed. When I checked the U.S. Copyright records much later, I found a record, **Exhibit 14**, of a Bill of Sale of the NASCAR 2003 game, from Papyrus Design Group, Inc. to "Sierra On-Line, Inc. & First, LLC" recorded on June 28, 2005.

39. In August 2005, I went on vacation to Montana. I was completely out of touch with anything in the sim racing world. Upon returning, I was greeted with a Summons and the initial Complaint in this case.

40. Although I own the web sites, I am not the only one who has access to them. Because the sites host races, in my absence other people have to be able to have access to the sites. It was a mistake by a part time administrator while I was away on vacation that led to the re-posting of a link that could have enabled someone to download the file I previously had agreed to suspend offering pending a more agreeable outcome to discussions with iRacing.

41. I have never run any commercials on any of my web sites, and I have never profited from the sites. I spent the time creating the files, because simulated auto racing is my hobby. So many other sim racing enthusiasts had contributed to enhancements to the NASCAR2003 game, especially during 2003 and the first half of 2004 after Sierra had abandoned the game, that I felt an obligation to do my part. I never offered any of my files for sale; I always made them available without charge. Nobody was required to register on my sites or to pay in order to download files.

42. Creating the files was not a central part or a necessary part of my web sites. They were just two among a large number of mod and add-on files created by Project Wildfire and other sim enthusiasts that were available on the site. All of the files had been

made available to the sim racing community free of charge. The primary functions of the web sites are to host races and to facilitate communication among members of the sim racing community. The only persons who were asked to contribute were members who joined the racing league on the torn80alley.com web site. When I inherited that site from the person who started it, the members were paying a monthly fee. Later I changed it to a voluntary donation system.

43. I have never received any money from anyone for posting anything on any of my web sites. I never charged anybody for viewing anything on the sites. Hosting the web sites is a hobby. It is not my occupation or my job. I am a systems engineer. Until I became unemployed recently, I had a full-time job. The only monies that I have ever received for hosting the sites were from members who joined the sites and made voluntary contributions to help defray the cost of running the sites. If any money was left over at the end of a year, it was used to buy food and beer for an annual gathering of Torn8oAlley.com members at The Texas Motor Speedway.

44. The mods that I worked on could not have had any negative impact on the NASCAR2003 game. The OWR and OWSC mods were released at a time when the game was no longer available for sale. The NASCAR2003 game has not been sold for the past four years, still is not available as a retail game, and iRacing has no plans to make it available. Because my files have not been available to anyone since August 2005, and then only briefly, even if the NASCAR2003 game were offered for sale, my files could not have any negative effect on sales of the NASCAR2003 game.

45. Even if the NASCAR2003 game were some day offered for sale, and someone has the mods that I worked on and made available on my web site, that would not adversely

affect sales of the NASCAR2003 game. The user still must have a valid copy of the NASCAR2003 game installed to use the mods. If anything, by making new mods available to prospective purchasers of the NASCAR2003 game, it makes it more likely that the game would attract more customers, not less.

46. The mods that I created can have no effect on iRacing's present product. iRacing's product is a subscription-based product hosted by iRacing, and is accessible only by logging onto iRacing's site. iRacing has not offered, and has no plans to offer any product that replaces the NASCAR2003 game. Having the files that I posted, and even having the NASCAR2003 game, does not enable one to use iRacing's program. The mods that Project Wildfire and other groups including the group with which I worked released have no impact on iRacing's present product.

47. According to iRacing's web site, and the testimonials on it, the customers that iRacing is primarily seeking to attract are professional race car drivers and those who wish to become professional race car drivers. The people who use the NASCAR2003 game by and large are not race car drivers and have no prospect of becoming so. This is consistent with representations made by iRacing. While iRacing was developing their product, iRacing repeatedly represented that what they were developing had no relationship to the NASCAR2003 game, and therefore iRacing could not be harmed by work done on the NASCAR2003 game. David Kaemmer repeatedly said that whatever iRacing was developing was not going to be based on NR2003, and "was never planned to be." In fact, on June 5, 2005, Kaemmer posted on theUSPits.com website, **Exhibit 15**, the following:

First, our upcoming release will not be a mod of NASCAR racing 2003 Season and was never planned to be. While this title is being used in our current Beta, we are

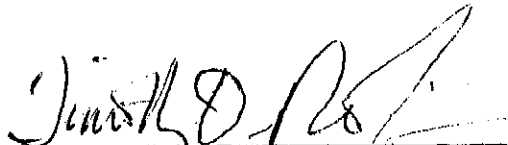


testing mainly scoring and community concepts. The physics and technology are not being tested as a part of our upcoming release.

48. The mods that I worked on were developed with the help of tools and other mods released by Project Wildfire with the knowledge and consent of Papyrus/Sierra. Project Wildfire's Senior Advisor was John Henry, so before he purchased any rights in the game, he was one of the ones participating in making changes to the NASCAR2003 game, including changes to the physics of the mods, and knowingly allowing the dissemination of these to the sim racing community. If they were not authorized by Papyrus/Sierra, then John Henry was participating in violating Papyrus/Sierra's EULA. I worked on the mods, and the mods were released, only after Papyrus/Sierra had ceased selling or supporting NASCAR2003, and while Papyrus/Sierra still appeared to be the owner of the NASCAR2003 game. I had every reason to believe that I was authorized to do what I did.

SUBSCRIBED AND SWORN TO under the pains and penalties of perjury this

2<sup>ND</sup> day of February 2009.

  
\_\_\_\_\_  
Tim Robinson